

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1286 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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RAMANBHAI FULABHAI PATEL - Appellant(s)

Versus

STATE OF GUJARAT - Opponent(s)

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Appearance :

MR MJ BUDDHBHATTI for Appellant(s) : 1, (MR VS MEHTA) for Appellant(s)
: 1, MR JM BUDDHBHATTI for Appellant(s) : 1,
Mr L.R. Pujari, Addl.PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 29/08/2007

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgment and order of conviction and sentence dated 21.10.1993 passed by the Special

Judge, City Sessions Court, Court No.2, Ahmedabad City in Special Case No.29 of 1991 whereby the appellant was sentenced to undergo S.I. for a period of two years and to pay a fine of Rs.500/-, in default, he shall undergo further S.I. for a period of three months for the offence punishable under section 7 of the Prevention of Corruption Act, 1988. The accused was further convicted to undergo S.I. for a period of two years and to pay fine of Rs.500/-, in default, to undergo further S.I. for a period of three months for the offence under section 13 (1)(d) (i), (ii) and under section 13(2) of the Prevention of Corruption Act, 1988. Both the sentences were ordered to run concurrently.

2. The facts necessary for disposal of the present appeal, in brief, are as under:

One Pataruprasad Mishrimal Jaiswal, the complainant, was residing at Gokulnagar, Surebiye Estate, Bage Firdauz, Vastral Road, Amraiwadi, Ahmedabad since last 5 to 6 years prior to the date of the complaint, i.e. 8.3.1991. The complainant was previously working in an industrial unit as Turner.

But as he was relieved of his duties due to his active participation in trade union, a case was pending in the Labour Court against his termination of services by the management of the said industrial unit. As the complainant was unemployed, in the year 1986-87, he started a small repairing shop named as 'Alakniranjan Cycle and Primus repairing shop.

2.1. The present appellant-accused, Ramanbhai Fulabhai Patel was working as a Shop Inspector in the Shops & Establishment Department of Ahmedabad Municipal Corporation. It is alleged that, during May/June, 1990, the accused visited the shop of the complainant and enquired about the licence of the shop. The complainant had no licence and hence the present accused advised the complainant to obtain licence from the Ahmedabad Municipal Corporation (for short, 'the Corporation') for running the said shop. Pursuant to that, the complainant went to the Shops & Establishment Department of the Corporation on 16.7.1990. He was given the form which he filled up and submitted in the office and also paid Rs.20/- towards licence fee. He was also issued a receipt

for Rs. 20/-. The complainant was then informed that an Inspector of the Department would visit his shop and give him the requisite licence. However, according to the complainant, till 7.3.1991, he did not receive the licence and hence on 7.3.1991, he, along with his neighbour Ganpatbhai Kishanbhai, again went to the above department and informed the concerned officer that neither anybody had visited his shop nor the licence has been issued. The complainant was asked to contact the present appellant-accused, who was working as Inspector of Shops and Establishment department. It is alleged that the accused demanded Rs.50/-, if he were to get the licence. The complainant told the accused that he is a poor man and he is not able to give the said amount of Rs.50/-, but the accused insisted and told him that if the money is not given, he will not get the licence. The complainant told him that at present he has no money and thereupon, the appellant-accused asked him to go to him on next day with the said amount. As the complainant was not willing to offer the bribe, he lodged the complaint with the Anti Corruption Bureau on 8.3.1991 before PW 3, P.I.,

Mr J.H. Solanki. Thereupon the complaint was taken down and two panch witnesses were requisitioned and were introduced to the complainant. Upon tendering of the currency note worth Rs.50/- by the complainant, the number of the note was noted, anthracene powder was smeared on it and instruction for experiment of ultra violet light was given. When the said currency note was exposed to normal light, nothing appeared but when the same was observed under in ultra violet light, shining colours appeared. The complainant was told by P.I. Solanki that unless demanded, the note should not be taken out from his pocket. After following due procedure for the raid including the panchnama, the raiding party along with the panch witnesses reached the office of the Corporation. The complainant was accompanied by first panch witness, PW 2, Manilal Maganlal Parmar. The first witness was instructed to hear the conversation taking place between the complainant and the accused whereas the other panchas were asked to remain with the raiding party. Accordingly, the complainant along with the panch witnesses reached the office of the accused. Upon demand by the accused, the complainant tendered

the smeared currency note of Rs.50/- to the accused, who accepted it and put the same currency note in his pants pocket. On being signalled, the raiding party reached the spot and the currency note was recovered from the accused. The said currency note was inspected in the ultra violet lamp and shining colour was found in the hands and on the border of the bush shirt and pants pocket of the accused as also in the hands of the complainant. The licence was also recovered during the raid. Seizure memo was prepared and the raid was concluded.

3. Further investigation was carried out and thereafter the investigation papers were sent to the competent authority of the accused for obtaining requisite sanction and upon obtaining requisite sanction (Exh.17), charge sheet against the accused came to be filed before the Court on 3.10.1991. Pursuant to that, the learned Special Judge framed charges against the accused on 25.11.1991 as per Exh.2. The accused has not pleaded guilty and claimed to be tried.

4. The prosecution, in order to prove its case, has examined the following witnesses:

(1)PataruprasadJaiswal,PW 1, the complainant,	Exh.7
(i)Manilal M.Parmar, PW 2	Exh.11
(ii)Jayeshbhai Solanki, PW 3	Exh.14

5. The prosecution has also adduced documentary evidence consisting of Mark-A, the complaint at Exh.15, trap panchnama, Exh.12, the seizure memo, Exh.13 and the seizure memo in respect of the complaint at Exh.8. The defence has produced two documents at Exhs. 16 - the office order pertaining to the appointment of the accused and Exh.9, the licence issued to the complainant which is also muddamal article No.5.

6. After the evidence of the prosecution, the further statement of the accused was recorded under section 313 of the Criminal Procedure Code, in which he has stated that a false case is filed against him and he had neither demanded nor received any amount from the complainant and that he never visited the

shop of the complainant before one and half month from the date of 16.7.1990. He also stated that he never advised the complainant to obtain licence.

7. After hearing the arguments of the learned APP and the learned advocate for the accused, the learned Special Judge convicted the present appellant-accused for the offences made out against him as referred to above and against the said judgment and order of conviction and sentence, the present appeal has been filed by the appellant-accused.

8. Mr M.J. Buddhahatti, learned advocate for the appellant-accused took this court through the entire evidence of PW 1, the complainant-oral as well as documentary evidence, PW 2, panch witnesses Manilal M Parmar and PW 3, P.I., Jayesh Solanki. Mr Buddhahatti also took this court through the judgment of the court below to argue that the complainant, PW 1 is not a reliable witness and his deposition is full of contradictions and hence, his evidence should not be believed. He pointed out that PW 1, the

complainant, in his complaint Exh.15 in terms, says that the present appellant, Ramanlal Patel, the Shop Inspector of the Ahmedabad Municipal Corporation had visited the shop of the complainant about 8 months' prior to the complaint and had interrogated him about the licence of the shop. The Office Order, Exh.16 indicates that the accused has been appointed as Inspector in the Shops & Establishment Department covering the period from 21.12.1990 to 31.3.1991. So the question of the appellant-accused visiting the shop of the complainant in the month of May or June, 1990 does not arise, as he had joined his duty only from 21.12.1990. He, then vehemently argued that the complainant is telling a totally false story and the accused has been falsely implicated in the case and hence, in light of the above referred facts, the evidence of the complainant should not be believed as there is contradiction in his evidence. He also argued that the complainant was suspended by his employer on account of his participation in the trade union activities. In this regard, he had filed case in the Labour Court and that he was discharged from the service during the pendency of his case in

the Labour Court. He also argued that in fact the complainant was discharged from duty because of a theft committed by him and this fact was suggested in his cross examination. He also argued that taking into consideration the character of the complainant, whatever allegations made in the complaint, the deposition and the evidence given by him should not be believed as those were absolutely false and the accused was falsely implicated in the present case.

9. Considering the arguments advanced by the learned advocate for the appellant and on going through the evidence of the complainant, it appears that the accused had not visited the shop of the complainant in the month of May or June, 1990. It is obvious that after the complainant visited the Shops & Establishment department of the Corporation, he must have enquired about the name and the name of of Ramanlal Patel was thus given to ACB office presuming that it was he who visited the complainant's shop.

10. I have carefully gone through the evidence of PW 1, the complainant. It is found that he never stated on oath before the court that the Inspector who visited his shop for the first time, had demanded any amount by way of bribe from him for obtaining licence. He has, in his evidence, stated that the Inspector who visited his shop only informed him that to run the shop, licence is must and he has to get it. So in the month of May/June, 1990 whether the present appellant had visited the shop of the complainant or not, is irrelevant as there was no demand made on that day by the person who visited the shop of the complainant. Merely because PW 1, the complainant stated on oath that the present appellant visited his shop at one point of time and if by mistake he gave name of the present appellant, only on that ground the entire evidence of PW 1 could not be thrown out. The complainant categorically stated in his evidence before the court on oath that on 7.3.1991 he went to the office of the accused and on that day the accused demanded the amount of Rs.50/- as bribe for issuing licence for his shop. Thus, it is clear that before 7.3.1991 there was no demand

made by the accused as the complainant never contacted the accused. Hence the question of demanding Rs.50/- before 7.3.1991 does not arise. The said fact is narrated by the complainant in his complaint which is produced at Exh.'15'. On 8.3.1991 when the complainant went to the office of the accused with PW 2 panch Manilal Maganlal Parmar, at that time also the accused demanded Rs.50/- by way of illegal gratification. On demanding the amount by the present accused, currency note of Rs.50/- which was smeared by anthracene powder was handed over to the appellant-accused and the appellant-accused accepted the same and put it in his pant's pocket. As far as this part of the evidence is concerned, no contradiction is found from the deposition of the complainant as well as the deposition of PW 2 Manilal Maganlal Parmar. The complainant is not shaken in his evidence as well as in the cross examination and stuck to his version which totally corroborates the deposition of PW 2 panch witness. On going through the evidence of PW 2 Manilal Maganlal Parmar also, it is found that the complainant and this witness went to the office of

the accused, met the accused and the accused demanded the bribe amount from the complainant and the complainant passed over the said amount to the accused and the accused accepted it and put it in his pants' pocket. This witness is a totally independent witness and he has no enmity with the present appellant-accused. Nothing has come out from his cross examination which creates doubts about his evidence. According to the deposition of this witness, when the licence was handed over to the complainant, the complainant in turn handed over the currency note of Rs.50/- to the appellant-accused. Thus, from the evidence of these witnesses, it is crystal clear that the accused had demanded bribe from the complainant and accepted the same. The licence which was seized during the trap as muddamal article also clearly shows that the amount towards bribe was accepted by the present appellant-accused for giving licence to the complainant. The accused had given explanation during the cross examination of the complainant that when he turned to take the licence, the complainant thrust the currency note of Rs.50/- into his pocket. The explanation or

theory put forward by the appellant accused is totally unbelievable as he was caught red handed on acceptance of the amount of bribe. The number of the currency note recorded in the first part of the panchnama tallied with the serial number of the smeared currency note and furthermore, the experiment by ultra violet lamp showed the presence of anthracene powder in the hands of both the complainant and the accused, apart from those portions of their apparels which came in contact with the smeared currency note. In fact, the lower edge of the bush-shirt pocket of the accused showed presence of anthracene powder. This shows that after making the demand for gratification and on its tendering, the accused not only accepted it but without any protest, put it in his pocket. The explanation offered by the accused in his further statement recorded under section 313 of the Criminal Procedure Code that there was no recovery of the note from his pocket but it was from the hands of the complainant, does not seem to be correct for the reason that not one but three witnesses namely, the complainant, the decoy panch witness and the Police

Inspector have deposed to the effect that the currency note was recovered from the pants pocket of the accused. All these facts proved that the defence put forward by the accused is highly improbable and the appellant-accused could not give any other satisfactory explanation for having received Rs.50/- from PW 1. Thus, the court below has rightly held that the appellant-accused accepted the tendered amount as illegal gratification.

11. Lastly, Mr Buddhbhatti, learned advocate contended that in view of the judgment rendered by the Hon'ble Supreme Court in the case of ***"Ganga Kumar Srivastav v. State of Bihar"*** [(2005) 6 SCC 211], use of phenolphthalein powder in the 'trap' is a must. There cannot be any straight-jacket formula with regard to whether phenolphthalein powder or anthracene powder is required to be used in a 'Trap'. Nowhere in the said judgment there is mention that phenolphthalein powder only should be used. Hence, there is no base in his argument and this authority is not applicable to the present case.

12. Mr L.R. Pujari, learned APP submitted that the prosecution has proved its case beyond reasonable doubt against the present accused. The prosecution has proved the initial demand by the accused and established the 'demand and acceptance'. It is submitted by the learned APP that there is cogent and convincing evidence with regard to the anthracene powder marks in the border of the bush shirt and pant's pocket of the accused that the accused demanded the illegal gratification and accepted the bribe. He argued with emphasis that the accused was a Government servant at the relevant time when he was caught red handed during the trap. He also submitted that in the evidence of witnesses, no contradiction was found. Hence, no interference is called for by this court.

13. Mr Buddhbhatti, relying on a decision ***in State of Gujarat v. Tejbhai Karimbhai Vora (1999 (1) GLH 1024)*** submitted that, if the court is not inclined to allow the appeal, a lenient view should be taken for reducing the sentence. It is pertinent to note that in the case on hand, the incident in

question took place before 16 years. Taking into consideration the facts and circumstances of the case, in the opinion of this court, the sentence imposed for offence under section 13(1)(d)(i) and (ii) and under section 7 of the Prevention of Corruption Act, 1988 is required to be reduced to a minimum of one year. Reference in this connection may be beneficially made to the decision rendered by the Apex Court in the case of ***Biranchi Narayan Mohanty v. State of Orissa [(2001) 9 SC 288]*** wherein in para 4 of the judgment while holding that as the appellant has suffered other consequential punishment of loss of government job, the sentence of imprisonment was reduced from one year to a period of six months and the sentence regarding fine was ordered to remain unaltered.

14. Reference in this connection may also be had to the relevant observations at para 19 of the decision rendered in the case of ***State of Maharashtra v. Rashid B. Mulani [(2006) 1 SCC 407]***.

15. For the foregoing reasons, the appeal is **partly allowed**. In the facts and circumstances, while restoring the conviction, this court reduces the sentence from two years to one year for both the offences under section 13(1)(d)(i), (ii) and 13(2) and under section 7 of the Prevention of Corruption Act, 1988. Both the sentences to run concurrently. The accused, who is on bail, shall surrender within a period of **six weeks** from the date of receipt of the writ of this judgment to serve out the remaining sentence. The order of fine imposed by the court below for both the offences shall remain unaltered.

[M.D. SHAH, J.]

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